

CHAPTER 30 ZONING COMMISSION RULES OF PRACTICE AND PROCEDURE

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3000 GENERAL PROVISIONS

- 3000.1** The provisions of this chapter shall supplement procedures set out in the Zoning Enabling Act (D.C. Code §5-413 et seq. (1981)) the Zoning Regulations of the District of Columbia and the D.C. Administrative Procedure Act.
- 3000.2** The provisions of this chapter shall be effective on October 1, 1999, and shall be applicable in their entirety to all applications or petitions filed after that date with the Commission, and to applications or petitions already filed but for which a public hearing has not been granted by the Commission.
- 3000.3** No application or petition pending on October 1, 1999 shall be dismissed on the grounds that the applicant or petitioner failed to comply with the provisions of this chapter unless, after due notice of deficiency and expiration of a reasonable time as fixed by the Commission, the deficiency has not been corrected.

- 3000.4** In any conflict between the provisions of this chapter and the Zoning Regulations, the Zoning Regulations shall govern.
- 3000.5 In any conflict within this chapter between general and specific provisions, the specific provisions shall govern.
- 3000.6 In any conflict between this chapter and the D.C. Administrative Procedure Act (D.C. Code §1-1501 et seq. (1981)) the D.C. Administrative Procedure Act shall govern.
- 3000.7 The Director shall, following approval by the Commission, issue and revise application and petition forms and instructions to ensure presentation of adequate information required for the understanding and processing of applications and petitions.
- 3000.8 The Commission may, for good cause shown, waive any of the provisions of this chapter if, in the judgment of the Commission, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.
- 3000.9 Legal advice from the Office of the Corporation Counsel may be requested or received at any time.
- 3001 COMPUTATION OF TIME**
- 3001.1 In computing any period of time specified in this title, calendar days shall be counted.
- 3001.2 In computing any period of time specified in this title, the day of the act, event, or default after which the designated period of time begins to run shall not be included.
- 3001.3 The last day of the period computed as provided in §3001.2 shall be included unless it is a Saturday, Sunday, or official District holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, nor holiday.
- 3001.4 Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him or her, and the notice or paper is served upon him or her by mail, three (3) days shall be added to the prescribed period.
- 3001.5 Except as otherwise provided by law, whenever an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may for good cause be extended or reduced by the Commission.

3002 APPEARANCE AND REPRESENTATION

- 3002.1** **In a** proceeding before the Commission, any person or party may appear on his or her own behalf.
- 3002.2** Any person or party may be represented by any other person duly authorized in writing to do so.
- 3002.3** The authorization shall state specifically that the authorization includes the power of the agent or representative to bind the person in the case before the Commission.

3003 SERVICE OF PAPERS

- 3003.1** Any paper required to be served upon a party shall be served upon him or her or upon the representative designated by him or her by law to receive service of papers. When a party has appeared through a representative, service may be made upon the representative of record.
- 3003.2** Where there are numerous parties to a proceeding, the Commission may designate representative parties or make other special provisions regarding the service of papers.
- 3003.3** Service may be made and shall be considered complete as indicated in paragraphs (a) through (f) of this subsection or as otherwise authorized by law:
- (a) By personal delivery, on handing the paper to the person to be served, or leaving it at his or her office with his or her clerk or other person in charge or, if there is no one in charge, leaving it in a conspicuous place in the office; or, if the office is closed or the person to be served has no office, by leaving it at his or her usual place of residence with some person of suitable age and discretion then residing in that place;
 - (b) By telegram or mailgram, when deposited with a telegram or mailgram company properly addressed and with charges prepaid;
 - (c) By first-class mail, on deposit in the United States mail, properly stamped and addressed;
 - (d) By telecopy, or FAX, when telecopied with the proper telephone number of the intended recipient's telecopier;
 - (e) By e-mail when transmitted electronically, properly addressed to the attention of the intended recipient's telecopier; or
 - (f) In any specific manner prescribed by the Commission in a proceeding.
- 3003.4** Proof of service, stating the name and address of the person on whom served and the manner and date of service, shall be shown for each document filed.

3003.5 Proof of service may be made by any of the following means:

- (a) Written acknowledgement of the party served or his or her attorney of record;
- (b) The certificate of the attorney of record if he or she has made the service;
or
- (c) The certificate of the person making the service.

3004 MINUTES AND TRANSCRIPTS

3004.1 The minutes of Commission meetings and hearing are a matter of public record.

3004.2 The minutes of Commission meetings shall be summary in nature and shall include the vote of each member on each application or petition or procedural matter, and any ruling of the presiding officer.

3004.3 The hearing shall be reported under the supervision of the presiding officer, stenographically or by other means, by an official reporter who may be designated from time to time by the Commission or who may be a regular employee of the Commission.

3004.4 The transcript prepared by the reporter shall be the sole official transcript of the hearing.

3004.5 The transcript shall be open for inspection at the Office of Zoning.

3004.6 Copies of the transcript shall be available to parties and to the public from the official reporter on payment of the charges fixed for the copies_

3004.7 Parties shall be notified when the transcript is filed with the Commission.

3004.8 Changes in the official transcript may be made only when they involve errors affecting substance.

3004.9 A motion to correct a transcript shall be filed with the Commission within ten (10) days after the transcript has been filed with the Commission.

3004.10 Copies of the motion to correct a transcript shall be served simultaneously on all opposing parties or legal representatives.

3004.11 Objections to the motion to correct a transcript shall be filed with the Commission within five (5) days and served upon the parties.

3004.12 The transcript may be changed by the presiding officer at a public meeting to reflect any corrections

3005 MEETINGS AND HEARINGS

- 3005.1** On or about the first (1st) day of each three (3) month period during the year, the Director shall cause to be published in the ***D.C. Register***, and shall post in the Office of Zoning, a 12-month calendar or schedule of dates setting forth the dates of meetings and hearings that will occur during such period, as well as the dates by which an application or petition must be filed with the Commission to allow its consideration on a specific hearing date. Such calendar or schedule also shall set forth any additional hearing dates as may be required by the Commission to permit consideration of applications or petitions which have been timely and appropriately filed for a specific hearing date and which, but for reasons of excessive number of cases, continuances or otherwise, are not able to be heard or considered on such date.
- 3005.2** The meetings and hearings of the commission shall be open to the public, except that a meeting to consider personnel matters, litigation, or other matters that are privileged or sensitive and are not required to be open by applicable law may be closed at the discretion of the Commission.
- 3005.3** The proposed agenda for each meeting or the schedule for each hearing shall be posted in the office of the Commission and available to the public at least four (4) days prior to a meeting or hearing.
- 3005.4** Copies of the agenda shall be available to the public at the meeting or hearing.
- 3005.5** Nothing in this section shall preclude the Commission from amending the agenda at a meeting or hearing.
- 3005.6** A meeting of the Commission shall be held once each month in accordance with a schedule to be established by the Commission, and additional meetings may be called as needed by the presiding officer or by three (3) members.
- 3005.7** The Commission shall schedule any hearings as needed, in addition to those placed on the quarterly calendar pursuant to §3005.1, for the purpose of receiving evidence and testimony on specific applications and petitions advertised in advance. Such hearings shall be held at the time and place the Commission or the presiding officer designates.
- 3005.8** Unless all parties to a hearing agree otherwise, or unless the Commission orders otherwise, the Commission shall not postpone or continue a public hearing on a contested case for a period in excess of thirty (30) days from the date of the granting of such postponement or continuance.
- 3005.9** If the time and place of resumption is publicly announced when a postponement, continuance or adjournment is ordered, no further notice shall be required.
- 3005.10** A majority of the Commission shall constitute a quorum.
- 3005.11** A member absent at the decision meeting may cast an absentee vote only if the member attended all of the hearings on the application or petition.

- 3005.12 A member attending a decision meeting and having read the transcript and reviewed the complete record may vote even though that member may not have attended any or all of the prior meetings or hearings on the application or petition.
- 3005.13 A majority of the Commission members present at a meeting or hearing may take a procedural action, but shall not take a proposed or final action on a petition or application unless the members also constitute a majority of the Commission.
- 3006 EVIDENCE
- 3006.1 Exhibits may be offered in evidence at the hearing.
- 3006.2 Exhibits may be in the form of photographs, models, graphs, or other appropriate visual displays.
- 3006.3 Any exhibit that exceeds a size suitable for inclusion in the record shall be reduced or folded to a size not to exceed legal size of eight and one-half by fourteen inches (8 1/2 in. x 14 in.).
- 3006.4 No material that exceeds legal size shall be submitted for the record.
- 3006.5 If models are used, photographs of the models not exceeding legal size shall be supplied at the public hearing.
- 3006.6 The Zoning Enabling Act, the Zoning Regulations (including appendices and the official Zoning Map), and this chapter shall be a part of the record of every proceeding before the Commission, and it shall not be necessary for any party or person formally to move their introduction into evidence.
- 3006.7 The applicant, a government agency representative, a party, or a person may appear as a witness and offer evidence at a hearing.
- 3006.8 In a contested case conducted under §3022, witnesses may be examined or cross-examined by the Commission, the applicant, or any party so determined by the Commission under this chapter.
- 3006.9 In a rulemaking case conducted under §3021, witnesses may be examined only by the Commission.
- 3006.10 In any case, any authorized representative of any public agency or governmental unit or department may pose a question to a witness through the presiding officer.
- 3007 [RESERVED]
- 3008 [RESERVED]

3009 [RESERVED]**3010 APPLICATIONS AND PETITIONS**

3010.1 Any proceeding before the Commission shall be initiated by the filing of an application or petition with the Commission on the form and in the number that the Commission may prescribe, except that the Commission may initiate a case on its own motions.

3010.2 Contested cases (i) are adjudicatory in nature, (ii) present issues for resolution at a public hearing that potentially will affect a relatively small number of persons or properties and (iii) involve primarily questions of fact applicable to a small number of persons or properties, and broader issues of public policy are secondary concerns. Contested cases shall include, without limitation, the following:

- (a) Planned unit developments filed according to the provisions of Chapter 24 of this Title;
- (b) Requests for zoning map amendments filed by the property owner or owners for a single property or for multiple properties that are contiguous or are only separated by a street or alley; and
- (c) Applications for air space development.

3010.3 Contested cases shall be initiated by the filing of an application. Public hearings on a contested case shall be processed and conducted according to the provisions of D.C. Code 1-1509 and §3022 of this Chapter, unless the Commission determines otherwise pursuant to §3010.7.

3010.4 Rulemaking cases are (i) legislative in nature, (ii) cases in which the issues to be resolved at the public hearing may affect large numbers of persons or property or the public in general, including such matters as the following:

- (a) A zoning text or map amendment that is proposed in furtherance of the Comprehensive Plan for the National Capital or other public law or policy;
- (b) Cases in which the primary issues involve land-use, urban planning and zoning policies, such as the development pattern of the city or a particular geographic area, population density, distribution of employment centers, traffic and transportation patterns and related matters; and
- (c) Cases in which the facts, information and opinions sought for the public hearing are to come from a wide cross-section of the public.

3010.5 Rulemaking cases include the following:

- (a) Proposals to amend the text of the Zoning Regulations;

- (b) Proposals initiated by public agencies to amend the zoning map for a neighborhood, commercial district or other geographic area encompassing multiple properties unless determined otherwise by the Commission pursuant to § 3010.7;
 - (c) Proposals initiated by private persons, organizations or other entities to amend the zoning map in cases where:
 - (1) The petitioner or petitioners do not own all of the property proposed to be rezoned; or
 - (2) The petitioner or petitioners own all of the property proposed to be rezoned, but the ownership pattern is geographically scattered or otherwise of a character that raises land use policy questions to a greater degree than highly localized issues of fact and effects on neighboring properties.
- 3010.6 Rulemaking cases are initiated by the filing of a petition. Public hearings shall be processed and conducted according to the provisions of §3021 of this Chapter, unless the Commission determines otherwise pursuant to §3010.7.
- 3010.7 Notwithstanding the classifications of cases found in §§3010.2 and 3010.5, the Commission may, on its own motion or at the request of any public agency, person or other entity, review and determine the designation of such case as a rulemaking case or a contested case based on the standards contained in §§3010.2 and 3010.4.
- 3011 REVIEW AND PROCESSING OF APPLICATIONS AND PETITIONS
- 3011.1 As soon as an application or petition is accepted for filing by the Director of the Office of Zoning, the Director shall place a copy of the application or petition in the public record of the Commission and shall refer a copy to the Office of Planning for review and recommendation on whether the matter should be processed further.
- 3011.2 The report of the Office of Planning on whether the matter should be set for public hearing shall be in writing and filed with the Director of the Office of Zoning at least ten (10) days prior to the meeting at which it is to be considered by the Commission, and forthwith shall be filed in the public records of the Commission.
- 3011.3 After considering the application or petition and the recommendations of the Office of Planning, and after reasonable opportunity for the applicant or petitioner to present his or her views, the Commission may dismiss the application or petition or set it down for public hearing or other proceeding.

- 3011.4 The vote of a majority of the full Commission shall be required to deny or dismiss an application or petition without a hearing. The vote of a majority of the members present may set the matter down for a public hearing or other proceeding.
- 3011.5 If the matter is denied or dismissed without a public hearing, the Commission shall issue a dismissal order, copies of which shall be published in the *D.C. Register*, served on the applicant, and provided to the public library system and to the appropriate locations. The order shall include a statement of reasons for the dismissal.
- 3011.6 If the Commission denies or dismisses an application or petition without prejudice, the order shall also state the type of modification the Commission considers appropriate.
- 3011.7 If the matter is set down for a public hearing, the Commission shall at the same meeting:
- (a) Confirm whether the matter will be heard as a contested or a rulemaking case according to the standards set forth in Section 3010 and provide that the notice of hearing will state such classification;
 - (b) Schedule the date or dates for the public hearing, providing for an adequate number of public hearing sessions within a short time span, taking into account the nature and complexity of the case as presented in the report of the Office of Planning and any additional comments by the Office of Planning or the Director of the Office of Zoning;
 - (c) Make every effort to expedite cases regarding which the Office of Planning report and comments at the meeting suggest that:
 - (1) The application or petition has substantial merit in the public interest;
 - (2) The issues in the case are relatively straightforward, and few if any modifications to the proposal are likely to be necessary; and
 - (3) Little or no opposition has yet appeared, and the concerns at this preliminary stage appear to be capable of resolution in an expedited processing.
- 3011.8 In expediting certain cases as provided in 3011.7, the Commission shall ensure that large or more complex cases of great import to the public interest are not delayed or are only delayed to a minor degree.
- 3011.9 An applicant or petitioner granted a public hearing and other processing shall be so notified and shall be informed of any other requirements of the Commission.

3012 AGENCY REPORTS

3012.1 As soon as an application or petition is set down for a public hearing, the matter shall be referred to the Office of Planning and any other public agencies that may be requested to provide information and assistance, depending on the nature of the application or petition.

3012.2 The Director of the Office of Planning shall coordinate review of the application and prepare an impact assessment of the project. The assessment shall include reports in writing from all relevant District departments and agencies including the Department of Public Works, the Department of Housing and Community Development, and, if a historic district or historic landmark is involved, the State Historic Preservation Officer.

3012.3 The written reports and recommendations requested by the Commission pursuant to §3011.3 shall be filed by the Director of the Office of Planning with the Director of the Office of Zoning at least ten (10) days in advance of the hearing. The Director of the Office of Zoning shall include these reports and recommendations in the public record.

3012.4 The Director of the Office of Zoning shall notify the Director of the Office of Planning in writing of the required attendance of agency representatives at the public hearing.

3012.5 If an Advisory Neighborhood Commission (ANC) wishes to participate in a matter being considered as a contested case proceeding under §§3022 through 3023 [Chapter 6, Rules of Practice and Procedures], the ANC shall file a written report with the Zoning Commission at least seven (7) days in advance of the hearing. In a matter being considered as a rulemaking proceeding under § 3021 [Chapter 5, Rules of Practice and Procedure], there shall be no filing deadline as long as the record in that case is open. All written reports shall contain the following:

- (a) An identification of the application;
- (b) When the public meeting of the ANC to consider the application was held;
- (c) Whether proper notice of that meeting was given by the ANC;
- (d) The number of members of the ANC that constitute a quorum and the number of members present at the meeting;
- (e) The issues and concerns of the ANC about the application, as related to the standards against which the application shall be judged;
- (f) The recommendation, if any, of the ANC as to the disposition of the application;
- (g) The vote on the motion to adopt the report to the Commission;

- (h) The name of the person who is authorized by the ANC to present the report; and
- (i) The signature of the chairman or vice-chairman of the ANC.

3012.6 The Commission shall give “great weight” to the written report of the **ANC**, as required by D.C. Code §1-261 (1981). In the event the ANC submits its report on the basis of understandings, agreements or meetings with the applicant which later are modified by the applicant, the designated representative of the ANC may comment orally concerning the specific modifications. No other new matters may be presented orally by the designated representative of the ANC. The Commission may leave the record **open** to permit the ANC to submit a revised report.

3012.7 A proceeding that is a contested case within the meaning of D.C. Code §1-1502(8) (1981) shall be conducted pursuant to the requirements of the D.C. Administrative Procedure Act.

3013 SUPPLEMENTAL FILINGS

3013.1 As soon as practical, but in no case less than twenty (20) days before the notice of hearing is scheduled to be published in the **D.C. Register**, the applicant or petitioner shall file twenty (20) copies of the following with the Director:

- (a) Any additional information, reports, or other materials specified by the Commission at the time the matter was set down for public hearing and any additional copies of the original application and supportive material, if unchanged; or, if the Zoning Commission requested the applicant to make any changes in the application, copies of the up-dated application and supportive material;
- (b) A list of witnesses who are prepared to testify on the applicant’s behalf;
- (c) A written summary of testimony of all witnesses or of the written report and the area of expertise of any expert who will be called to testify at the hearing;
- (d) Any additional information, reports, or other materials the applicant **or** petitioner may wish to introduce;
- (e) Reduced plans, which plans shall be no larger than eleven inches by seventeen inches (11 in. x 17 in.) show the “north arrow” reading up, and include a bar scale;
- (f) A list of maps, plans, or other documents that are readily available to the general public and which will be offered into evidence; and

- (g) An estimate of the time required for the presentation of the applicant's case, subject to the decision of the presiding officer as provided in §3020.1(j).
- 3013.2 At the same time as filing the material that is required by §3013.1, the applicant shall file two (2) sets of full-size plans.
- 3013.3 In the case of a map amendment pursuant to the provisions of §3021, the supplemental information filed by the petitioner shall include the names and addresses of the owners of all property proposed to be rezoned.
- 3013.4 If the application is processed as a map amendment, public air space application, or planned unit development, and proffers any amenity or benefit that is set forth in §3103.5, the applicant shall file a memorandum of understanding that has been executed by the applicant and the agency that would enter into or administer the agreement to provide the amenity or benefit.
- 3013.5 The provisions of §3013.4 shall apply to the following benefits and amenities;
 - (a) Minority participation opportunities through agreement with the D.C. Local Business Opportunity Commission;
 - (b) First-source employment opportunities through agreement with the Department of Employment Services;
 - (c) Cash contributions to the D.C. Public Schools or other agency;
 - (d) Services provided for the elderly, handicapped, children, or others through agreement with one or more agencies;
 - (e) Agreement with the Department of Public works, the National Park Service, or other government agency or private entity to provide or maintain improvements to the public property;
 - (f) The production of housing units through agreement with the Department of Housing and Community Development, the affected Advisory Neighborhood Commission, or any other agency or private entity; and
 - (g) Any other amenity that would require the agreement of or administration by any government agency or private entity.
- 3013.6 For all applications filed pursuant to §3022, the supplemental information filed also shall include the following:
 - (a) The names and addresses of the owners of all property located within two hundred feet (200 ft.) of the subject property: provided, however, in the case of a residential condominium or cooperative with twenty five (25) or more dwelling units, mailed notice may be provided to the board of directors or to the association of such condominium or cooperative which represents all of the owners of all such dwelling units; and

- (b) The name and address of each person having a lease with the owner for all or part of any building located on the property involved in the application.
- 3013.7 The Director shall not issue any notice of hearing until the applicant or petitioner certifies in writing that all of the requirements of this section have been compiled with.
- 3013.8 No application shall be modified less than twenty (20) days prior to public hearing.
- 3013.9 The Commission may permit the modification of the application at the hearing.
- 3013.10 If the application includes a report by a transportation consultant or expert, a copy of such report shall be provided to the Department of Public Works at least twenty (20) days prior to the public hearing.
- 3014 NOTICE OF HEARINGS: GENERAL
- 3014.1 Notice of a hearing pursuant to the provisions of §3021 or §3022 shall be given as follows:
 - (a) Notice of the hearing shall be published in the D.C. Register at least forty (40) days in advance of the hearing;
 - (b) By posting a copy of the notice of the public hearing in the Office of Zoning at least forty (40) days prior to the hearing; and
 - (c) By providing copies of the notice of the public hearing to the public library system and the appropriate Advisory Neighborhood Commission(s) for posting in appropriate locations. These copies of the notice shall be mailed or delivered at least forty (40) days prior to the hearing.
- 3014.2 Each notice shall include a general summary of the application or petition under consideration and shall state the time and place of the public hearing, the name of the applicant or petitioner, the action of the Commission prayed for, and whether the proceedings will be conducted pursuant to §3021 or §3022 of this chapter.
- 3014.3 For hearings to amend the Zoning Map pursuant to §3021, the petitioner shall post the street frontage of each square affected by the rezoning proposal with a notice of public hearing. This information shall be posted at least forty (40) days in advance of the hearing.
- 3014.4 The notice required by §3014.3 shall be supplied by the Director showing the following:
 - (a) The calendar number of the petition;

- (b) The nature of the petition;
- (c) The name of the petitioner;
- (d) The property involved; and
- (e) The location, time, and date of the public hearing.

3014.5 The petitioner shall comply with the requirements of §§3015.7 through 3015.9, regarding filing of a sworn affidavit and maintenance of the posting.

3014.6 The Commission shall give any additional notice of the hearing, including the application of the provisions contained in 93015 as it deems appropriate, feasible and applicable.

3015 NOTICE OF CONTESTED CASE HEARINGS

3015.1 Notice of a hearing pursuant to the provisions of §3022 of this title shall be given in accordance with the requirements of §3014 and the additional requirements set forth in this section.

3015.2 Notice of the hearing published in the D.C. Register shall also include lot, square, and street address of the property involved; and the number of the Advisory Neighborhood Commission area in which the property is located. This notice shall also cite the requirements for intervention as party.

3015.3 At least forty (40) days prior to a hearing, the Commission shall mail a copy of the notice to the following:

- (a) Owners of all property within two hundred feet (200 ft.) of the property included in the application; provided, however, in the case of a residential condominium or cooperative with twenty five (25) or more dwelling units, mailed notice may be provided to the board of directors or to the association of such condominium or cooperative which represents all of the owners of all such dwelling units;
- (b) Each person having a lease with the owner for all or part of any building located on the property involved in the application; and
- (c) The Advisory Neighborhood Commission for the area in which the property is located, or for any other Advisory Neighborhood Commission which is within two hundred feet (200 ft.) of the property involved in the application.

3015.4 When a Zoning Map amendment, planned unit development, or air space development is requested by a property owner for his or her property, the applicant shall give additional notice of the public hearing by posting the property with notice of hearing at least forty (40) days in advance of the hearing.

- 3015.5 The notice required by §3015.4 to be placed upon applicant's property shall be posted in plain view of the public at each street frontage on the property and on the front of each existing building located on the subject property.
- 3015.6 All notices required by §3015.4 shall be supplied by the Director and shall show the following:
- (a) The calendar number of the application;
 - (b) The nature of the application;
 - (c) The name of the applicant;
 - (d) The property involved; and
 - (e) The location, time, and date of the public hearing.
- 3015.7 When required to post any notice by §3015.4, the applicant shall file with the Director a sworn affidavit demonstrating compliance with the applicable provisions of §3015.4 and the provisions of §3015.5. This affidavit shall be filed not less than thirty (30) days prior to the public hearing. A form of affidavit supplied by the Director may be used, but is not required.
- 3015.8 The applicant shall attach to the affidavit a photograph of each sign after posting and as viewed by the public, identifying the street frontage, or other location where applicable under §3015.4, of each sign.
- 3015.9 The applicant shall make a reasonable effort to maintain the posting by checking the signs weekly and re-posting when necessary. The applicant shall swear or affirm at the hearing that this has been done.
- 3015.10 Notice of the public hearing pursuant to §3015.3 shall not be a jurisdictional prerequisite to action by the Commission. It shall be intended to offer supplemental notice only.
- 3015.11 If a failure of notice under §3015.3 is alleged and proven, the Commission may consider all the surrounding circumstances, including the extent of actual notice received by the public from all sources, attendance at the public hearing, and the nature and extent of the proposed construction and use under the application, if approved. On the basis of these considerations, the Commission may determine whether the public hearing will be postponed, continued or held as scheduled.
- 3016 [RESERVED]
- 3017 [RESERVED]
- 3018 [RESERVED]

3019 [RESERVED]

3020 HEARING PROCEDURES: GENERAL

3020.1 The presiding officer shall have authority to do the following

- (a) Regulate the course of the hearing;
- (b) Rule upon offers of proof and receive relevant evidence;
- (c) Assign exhibit numbers for all written documentary and other tangible matter offered in evidence;
- (d) Dispose of procedural requests or similar matters, including motions to amend and to order hearings reopened;
- (e) Rule upon motions to consolidate applications for hearing;
- (f) Call, qualify, and examine witnesses;
- (g) Introduce into the record documentary or other evidence;
- (h) Request any party or person at any time during the hearing to state his or her respective position concerning any issues in the proceeding and theory in support of that position;
- (i) Rule upon the qualifications of witnesses offered as experts;
- (j) Exclude unduly repetitious or irrelevant testimony, and permit a witness to adopt the prior testimony of another witness;
- (k) Take any other action authorized by this title or that are necessary under this chapter.

3020.2 Except as provided in §3020.3, the applicant, persons and parties (except an ANC) in support shall collectively have a maximum sixty (60) minutes, exclusive of cross-examination, to present testimony, and all persons and parties (except an ANC) in opposition shall collectively have no more than sixty (60) minutes, exclusive of cross-examination, to present testimony in opposition. Nothing herein shall prohibit the Commission from placing reasonable restrictions on cross-examination, including time limits and limitations on the scope of cross-examination, by the applicant or parties in support or opposition.

3020.3 The Commission may grant additional or lesser time to that under §3020.2 to an applicant and persons and parties in support, or to persons and parties in opposition, to present a case, provided that the presiding officer shall ensure reasonable balance in the allocation of time between proponents and opponents.

3020.4 If surprise to the applicant or petitioner, or to a party in a proceeding under §3022, is clearly shown and the inability to proceed is demonstrated, a hearing may be adjourned to allow the applicant, petitioner, or party sufficient time to offer rebuttal evidence. This evidence shall be filed with the Director at least fourteen (14) days before the hearing is resumed.

3021 RULEMAKING HEARINGS

3021.1 The rules of procedure set forth in this section shall apply to rulemaking proceedings, including petitions for amendments to the text of the Zoning Regulations of the District pursuant to §102 of chapter 1 of this title, and to certain applications for a change in the Zoning Maps of the District designated by the Commission pursuant to §3010.7 as coming within the rulemaking power of the Commission.

3021.2 The rules in this section shall supplement the rules set forth in §§3011, 3013, 3014, 3015, 3020 and 3024.

3021.3 Any person may appear at a hearing in a rulemaking proceeding, and may present, within the time limits determined by the Commission, evidence, testimony or argument that is relevant and not unduly repetitious.

3021.4 No person shall have the standing of a party in a rulemaking proceeding.

3021.5 The order of procedure at the hearing shall be as follows:

- (a) Call to order and opening statement by the presiding officer;
- (b) Introductory statement by Commission staff;
- (c) Consideration of pending motions and procedural matters;
- (d) Applicant's or petitioner's case;
- (e) Reports or statements by the Office of Planning and other public agency representatives;
- (f) Affected Advisory Neighborhood Commissions;
- (g) Persons in support of the application or petition; and
- (h) Persons in opposition to the application or petition.

3022 CONTESTED CASE HEARINGS

3022.1 The procedure set forth in DC Code §1.1509 and this section shall apply to applications for a change in the Zoning Map of the District pursuant to §102 of chapter 1 of this title, and to applications for planned unit developments, air space developments, and similar plan review activities of the Commission, except as otherwise provided in §3010.7.

3022.2 This section shall supplement the rules set forth in §§3010, 3013, 3014, 3015, 3020 and 3024.

3022.3 Except for the applicant and the ANC, to participate as a party in a proceeding before the Commission, any affected person shall file with the Commission, not less than fourteen (14) days prior to the date set for the hearing, the following information:

- (a) The person's name and address;
- (b) A request to appear and participate as a party;
- (c) Whether the person will appear as a proponent or opponent of the application;
- (d) Whether the person will appear through legal counsel and, if so, the name and address of the legal counsel;
- (e) A list of witnesses who will testify on the person's behalf; and
- (f) A written statement setting forth why the person should be granted party status, including reference to the following:
 - (1) The property owned or occupied by such person, or in which such person has an interest, that will be affected by the action requested of the Commission;
 - (2) The legal interest such person has in such property, such as owner, tenant, trustee or mortgagee;
 - (3) The distance between such person's property and the property that is the subject of the application before the Commission;
 - (4) The environmental, economic, or social impacts that are likely to affect such person and/or such person's property if the action requested of the Commission is approved or denied;
 - (5) Any other matters that would demonstrate how the person would be affected or aggrieved by action upon the application: and

- (6) In considering any request for party status pursuant to §§ (1) through (5) above, the Commission shall grant party status only if the person has clearly demonstrated that his or her interests will be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than those of other persons in the general public.
- 3022.4 The Commission shall determine who will be recognized as a party. In so determining, the Commission shall consider whether the provisions of §3022.3 have been complied with and whether the specific information presented qualifies the person as a party.
- 3022.5 A party may cross-examine any other party or person, except the Commission; Provided, that the presiding officer may rule a question out of order when it is irrelevant, immaterial, or unduly repetitious.
- 3022.G Evidence shall be taken in conformity with D.C. Code §1-1509(b)(1981).
- 3022.7 Witnesses shall be examined and cross-examined orally under oath or affirmation.
- 3022.8 The order of procedure for presenting evidence at the hearing shall be as follows:
- (a) Call to order and opening statement by the presiding officer;
 - (b) Introductory statement by Commission staff;
 - (c) Consideration of pending motions and procedural matters;
 - (d) Applicant's case;
 - (e) Reports or statements by the Office of Planning and other public agency representatives;
 - (f) Affected Advisory Neighborhood Commission(s);
 - (g) Parties in support of the application or petition;
 - (h) Persons in support of the application;
 - (i) Parties in opposition to the application;
 - (j) Persons in opposition to the application; and
 - (k) Rebuttal by applicant.
- 3022.9 In a contested case proceeding under this chapter, no decision or order of the Commission on an application or petition shall be made except upon the exclusive record of the proceedings before the Commission.

3023 EX PARTE COMMUNICATIONS

- 3023.1 In any proceeding that is a contested case within the meaning of D.C. Code §1-1502(8) (1981) and §3010.2, all members of the Commission shall be prohibited from receiving or participating in any *ex parte* communication relevant to the merits of the proceeding.
- 3023.2 The prohibition provided in §3023.1 shall begin to apply upon the referral of any application or petition pursuant to §3011, and shall not terminate until the final disposition of the case.
- 3023.3 The prohibition provided in §3023.1 shall not extend to communication between the Commission and the staff concerning matters of record.
- 3023.4 As used in this section, the term “*ex parte* communication” shall mean an oral or written communication not in the public hearing record with respect to which reasonable prior notice to all participants to the proceeding is not given.
- 3023.5 As used in this section, the phrase “participants to the proceedings” shall mean all parties to the proceeding and any other persons who have been granted limited participation.

3024 CLOSING THE RECORD

- 3024.1 The record shall be closed at the end of the public hearing, except that the record may be kept open for a stated period for the receipt of specific exhibits, information, or legal briefs, as directed by the presiding officer.
- 3024.2 An applicant that has been required by §3013.4 of this title to submit a memorandum of understanding, and who did not submit, during or before the hearing, a fully executed written agreement to implement that memorandum, shall submit a written agreement, executed by the applicant and all appropriate agencies or entities, before the record closes.
- 3024.3 In a contested case proceeding conducted under §3022, the Commission shall allow all parties to a case an opportunity to file written responses to any exhibits, information, or briefs submitted after the close of the hearing. These responses shall be filed within seven (7) days following the date by which the exhibits, information, or briefs were due.
- 3024.4 In a rulemaking proceeding conducted under §3021, the Commission may allow persons an opportunity to file written responses to any exhibits, information, or briefs submitted within the period designated by the Commission.
- 3024.5 The Commission reserves the right to reopen the record at any time prior to the issuance of a final decision. In a proceeding under §3022, notice of reopening the record shall be served upon all parties to the proceeding.

3024.6 **Legal advice** from the Office of the Corporation Counsel may be requested or received at any time.

3024.7 The Commission shall have the authority to close the record at the end of a contested case hearing, including an application for a planned unit development, and to vote either to approve or deny an application as its proposed action. The Commission may describe such conditions as the Commission desires to have included in its final decision or order, subject to the requirements of D.C. Code §1 – 1509(e) and §§3025.3, 3028.3, 3028.4, 3028.5, 3028.6, 3028.7, 3028.8 and 3029.9.

3025 **POST-HEARING PROCEDURES: GENERAL**

3025.1 Prior to filing the final decision, the Commission may on its own motion reopen the record and require further hearing on designated issues before the Commission.

3025.2 Notice of a further hearing along with a designation of issues shall be forwarded to any party who participated in the earlier proceedings, or his or her legal representative. Notice shall be given at least fourteen (14) days prior to the date set for further hearing.

3025.3 A proposed action to amend the text or map of the Zoning Regulations or to approve a planned unit development or air space development shall be referred to the National Capital Planning Commission for comment and review pursuant to §492(b)(2) of Public Law 93-198, 87 Stat. 774 (District of Columbia Home Rule Act).

3025.4 The report of the National Capital Planning Commission shall be in writing. It also may be presented orally by the chairperson of the Planning Commission or a duly authorized representative of the Planning Commission.

3026 **PROPOSED ORDERS**

3026.1 In a contested case proceeding under §3022, the parties are encouraged to submit to the Office of Zoning proposed findings of fact and conclusions of law within such time as the presiding officer may direct, which in any event shall not be less than seven (7) days after the transcript of the hearing is delivered to the Office of Zoning.

3026.2 To assist parties in preparing proposed findings of fact and conclusions of law, the Office of Zoning shall make available to all parties and to the public a generic model of the form and substance of findings of fact and conclusions of law.

3026.3 Notice of the availability of the transcript shall be given to the parties in writing by the Director.

3026.4 Copies of proposed findings and conclusions shall be served by each party upon all other parties.

3027 PROPOSED ACTION

3027.1 The Commission may take a proposed action at the close of a hearing pursuant to §3021, or at a later time when the record is closed.

3027.2 In a rulemaking proceeding conducted under §3021, the following shall apply:

- (a) A proposed decision to amend the text or map of the Zoning Regulations shall be published in the D.C. Register as proposed rulemaking; and
- (b) A proposed decision not to amend the text or map shall not be published in the *D.C. Register*.

3027.3 In a contested case proceeding conducted under §3022, a proposed decision shall not be published in the *D.C. Register*.

3028 FINAL ACTION

3028.1 In a rulemaking proceeding conducted under §3021, to take final action to amend the text or map of the Zoning Regulations, the Commission may proceed following receipt of the report of the National Capital Planning Commission or after thirty (30) days of the referral set forth in §3020, whichever is sooner; Provided, that in no case shall the Commission take final action sooner than thirty (30) days after publication of the proposed rulemaking in the *D.C. Register*.

3028.2 In a rulemaking proceeding under §3021, to take final action that does not amend the text or map of the Zoning Regulations, the Commission may proceed without referral to or report from the National Capital Planning Commission and without publication of proposed rulemaking in the *D.C. Register*.

3028.3 In a contested case proceeding conducted under §3022, to take final action to amend the Zoning Map or approve a planned unit development or air space development, the Commission may proceed following receipt of the report from the National Capital Planning Commission or after thirty (30) days of the referral set forth §3020, whichever is sooner.

3028.4 To take final action that does not amend the Zoning Map or that denies a planned unit development, the Commission may proceed without a referral to or report from the National Capital Planning Commission,

3028.5 The Commission shall issue its written order on an application or petition no later than 45 days after the Commission's vote to take final action on such application or petition.

- 3028.6 The final action of the Commission on an application or petition shall be in the form of a written order that shall be filed in the record. In a proceeding under §3022, the order shall be accompanied by findings of fact and conclusions of law. The order shall be published in the ***D.C. Register***.
- 3028.7 In a proceeding under §3021, the order shall be published as a final rulemaking action.
- 3028.8 In a proceeding under §3022, prior to publication in the ***D.C. Register***, copies of the order shall be served on any party who appeared and participated in the hearing in person or by counsel.
- 3028.9 A written order setting forth a final action shall become final and effective upon publication in the ***D.C. Register***, unless a later effective date is provided for by the Commission. An amendment to the Zoning Map approved in connection with an application for a planned unit development shall, however, become effective only upon completion of the process required by chapter 24, and upon filing with the District a covenant ensuring compliance with approved plans.

3029 **RECONSIDERATION AND REFILING**

- 3029.1 Requests for reconsideration of an application or petition dismissed without a hearing shall not be entertained.
- 3029.2 No application or petition essentially the same as that dismissed without a hearing shall be accepted for filing within six (6) months after dismissal; Provided, that an application or petition dismissed without prejudice may be refiled at the convenience of the applicant or petitioner.
- 3029.3 An application or petition may be withdrawn prior to advertisement of a hearing. Following advertisement, an application or petition may be withdrawn only with the consent of the Commission. In either case, an application or petition shall not be accepted for re-filing within six (6) months after the withdrawal.
- 3029.4 No application or petition essentially the same as that denied following a hearing shall be accepted for filing within one (1) year after denial.
- 3029.5 A motion for reconsideration, rehearing or re-argument of a final decision in a contested case hearing under §3022 may be filed by a party within ten (10) days of the order having become final. The motion shall be served upon all other parties. The Commission shall not receive or consider any motion for reconsideration, rehearing or re-argument of a final decision in a contested case proceeding that is filed prior to the order having become final.
- 3029.6 A motion for reconsideration, rehearing or re-argument shall state specifically the respects in which the final decision is claimed to be erroneous, the grounds of the motion, and the relief sought,

- 3029.7 Within seven (7) days after a motion has been filed and served, any other party may file an answer in opposition to or in support of the motion.
- 3029.8 Neither the filing nor the granting of the motion shall stay a decision unless the Commission orders otherwise.
- 3029.9 A motion for reconsideration, rehearing, or re-argument shall not be a prerequisite to judicial review.
- 3029.10** A motion for reconsideration; rehearing or re-argument of a final decision in a rulemaking proceeding conducted under §3021 of this title shall not be accepted or considered, except that a member of the Commission may initiate a motion for reconsideration up to thirty-five (35) days after the vote on the final action (26 DCR 1865, 1883)

3030 CONSENT CALENDAR

- 3030.1** The purpose of this section is to create an expedited procedure to be known as the “Consent Calendar.” The procedure shall allow the Zoning Commission, in the interest of efficiency, to make without public hearing, minor modifications and technical corrections to previously approved final orders, rulemaking or other actions of the Zoning Commission, including corrections of inadvertent mistakes.
- 3030.2 For purposes of this section, “minor modifications” shall mean modifications of little or no importance or consequence as determined in the sole discretion of the Commission.
- 3030.3 Any party to a proceeding before the Zoning Commission, or the Zoning Commission upon its own motion, may request that a matter be placed on the Consent Calendar.
- 3030.4 The request shall be in writing, stating the nature of, reasons and grounds for the minor modification or technical correction and shall include a copy of any original Zoning Commission final order, map, plan, rulemaking, or other action or relief proposed to be modified or corrected.
- 3030.5 All written requests for placement of a matter on the consent calendar shall be made to the Director of the Office of Zoning.
- 3030.6 All written requests shall be served by the moving party on all parties in the original proceeding at the same time that the request is served on the Director of the Office of Zoning.
- 3030.7 The Director of the Office of Zoning shall, at his or her sole discretion, determine the appropriate form of public notice and any additional service, and shall take into account the nature of the request, and any issues relating to efficiency and fairness.

- 3030.8 Within seven (7) days after a request to put a matter on the Consent Calendar has been filed and served, any other party may file a response in opposition to or in support of the request. The responding party shall serve all other parties at the time that the response is filed with the Office of Zoning.
- 3030.9 The Director of the Office of Zoning shall provide written comments and recommendations to the Zoning Commission on each request for placement of a matter on the Consent Calendar.
- 3030.10 In reviewing requests for placement of a matter on the Consent Calendar, the Director of the Office of Zoning may request advice from other District agencies, including the Office of Corporation Counsel.
- 3030.11 Based upon the written request for placement of a matter on the Consent Calendar, all supporting and opposing submissions and the reports of other District agencies, the Director of the Office of Zoning shall determine which matters shall be placed on the Consent Calendar for consideration and action by the Zoning Commission without public hearing at its monthly meeting.
- 3030.12 Any member of the Zoning Commission may remove any item from the Consent Calendar for any reason. Any matter that is not placed on the Consent Calendar or is removed from the Consent Calendar shall be acted upon by the Zoning Commission according to the applicable procedures contained in other sections of this title.
- 3030.13 All relief granted by the Zoning Commission under this section shall be consistent with the intent of the Commission in approving its original order, map, plan, rulemaking or other action or relief proposed to be modified or corrected and shall not substantially impair the intent, purpose or integrity of the zone plan as embodied in the Zoning Regulations and Zoning Map.
- 3031 [RESERVED]
- 3032 [RESERVED]
- 3033 [RESERVED]
- 3034 [RESERVED]
- 3035 [RESERVED]
- 3036 [RESERVED]
- 3037 [RESERVED]

3038 [RESERVED]

3039 [RESERVED]

3040 FILING FEES

3040.1 At the time of filing an application for an amendment to the Zoning Map, the applicant shall pay a filing fee of two hundred fifty dollars (\$250).

3040.2 At the time of filing an application for an amendment to the text of the Zoning Regulations the applicant shall pay a filing fee of two hundred fifty dollars (\$250).

3040.3 At the time of filing an application for approval of a planned unit development, air space development, or any other action where review of a specific site or building plan is required, the applicant shall pay a filing fee of five hundred dollars (\$500).

3040.4 At the time of filing an application for a modification to an approved planned unit development (PUD), air space development, or any other action where review of a specific site or building plan was required, the applicant shall pay a filing fee of four hundred dollars (\$400).

3040.5 At the time of filing a request for approval of an extension of time to the validity of an order for a previously approved planned unit development (PUD), the applicant shall pay a filing fee of four hundred dollars (\$400).

3040.6 All fees shall be paid by check or money order made payable to the order of the D.C. Treasurer.

3041 HEARING FEES

3041.1 If the Commission schedules a public hearing on an application for an amendment to the Zoning Map, prior to advertisement of the hearing, the applicant shall pay a hearing fee in accordance with the following schedule:

- (a) For rezoning to any R-1, R-2, or R-3 district, for each acre or part of an acre, five hundred dollars (\$500);
- (b) For rezoning to any R-4, R-5-A district, for each acre or part of an acre, two hundred dollars (\$200);
- (c) For rezoning to any R-5-B district, for each acre or part of an acre, two thousand five hundred dollars (\$2,500);
- (d) For rezoning to any R-5-C, R-5-D or R-5-E district, for each acre or part of an acre, five thousand dollars (\$5000);

- (e) For rezoning to any SP, W, or CR district, for each twenty thousand square feet (20,000 sq. ft.) or part of that area, two thousand dollars (\$2,000);
 - (f) For rezoning to any C-1 or C-2 district, for each ten thousand square feet (10,000 sq. ft.) or part of that area, one thousand two hundred fifty dollars (\$1,250);
 - (g) For rezoning to any C-3, C-4, or C-5 district, for each ten thousand square feet (10,000 sq. ft.) or part of that area, two thousand five hundred dollars (\$2,500);
 - (h) For rezoning to any C-M or M district, for each twenty thousand square feet (20,000 sq. ft.) or part of that area, two thousand dollars (\$2,000);
 - (i) For any overlay district, the fee shall be computed in accordance with the requirement for the underlying zone;
 - (j) The maximum hearing fee for rezoning to any residential district (R-1, R-2, R-3, R-4, or R-5) shall be fifty thousand dollars (\$50,000); and
 - (k) For an application that purposes rezoning to more than one (1) zone district or is in the alternative, the fee shall be the total of the amounts for the area devoted to each proposed district or alternative computed separately.
- 3041.2** An applicant shall not be required to pay a hearing fee for any alternative districts added by the Commission at the time it sets the case for hearing.
- 3041.3** If the Commission schedules a public hearing on an application for an amendment to the text of the Zoning Regulations, prior to the advertisement of the hearing, the application shall pay a hearing fee of two hundred fifty dollars (\$250) for each section of this title proposed to be added, deleted, or amended, with a maximum hearing fee of one thousand dollars (\$1,000).
- 3041.4** If the Commission schedules a public hearing on an application for approval of a planned unit development, air space development, or any other action where review of a specific site plan or building plan is required, prior to the advertisement of the hearing, the applicant shall pay a hearing fee in accordance with the following schedule:
- (a) For each one hundred square feet (100 sq. ft.) of gross floor area included in the application devoted to dwelling units, and the immediate area needed to serve that dwelling unit, five dollars (\$5.00) with a maximum of fifty thousand dollars (\$50,000);
 - (b) For each one hundred square feet (100 sq. ft.) of gross floor area included in the application, devoted to any use other than a dwelling unit and the immediate area needed to serve that dwelling unit, ten dollars (\$10.00);

- (c) In the case of an application that combines dwelling units and other uses, the fee shall be the total of the amounts for each use computed separately; and
 - (d) There shall be no charge for the hearing on the second (2nd) stage of a two-step, planned unit development application.
- 3041.5 In the case of an application combining two (2) or more actions described in this section, the fee charged shall be the greatest of all the fees computed separately.
- 3041.6 If the Commission schedules a public hearing on an application for a modification to an approved plan unit development, air space development, or any other action where review of a specific site or building plan was required, prior to the advertisement of the hearing, the applicant shall pay a hearing fee of one thousand dollars (\$1,000).
- 3041.7 All fees shall be paid by check or money order made payable to the order of the D.C. Treasurer.
- 3042 WAIVER OF HEARING FEES
 - 3042.1 In the case of an application to permit the construction of a low or moderate income subsidized housing development, the D.C. Department of Housing and Community Development may request the Commission to waive the normal hearing fee.
 - 3042.2 For the purposes of this section, the term “subsidized housing development” shall mean a housing development that receives funding from a recognized District or federal government housing subsidy program. Low or moderate income projects shall be as defined by the U.S. Department of Housing and Urban Development.
 - 3042.3 To obtain the waiver, the applicant shall file with the application the request of the D.C. Department of Housing and Community Development for the waiver.
 - 3042.4 The request shall certify that the proposed development meets the requirements of §3042.2, and shall state why the proposed waiver should be granted.
 - 3042.5 The Commission shall rule upon the request for waiver of fees at the time the matter is set for public hearing.
- 3043 EXEMPTION FROM FEES
 - 3043.1 The following persons or groups shall not be required to pay either a filing fee or hearing fee:
 - (a) A department, office, or agency of the government of the District, where the property is owned by that agency and the property is to be used for a government building or use; and

(b) The National Capital Planning Commission.

3043.2 There shall be no fee required for the filing of a petition before the Commission. The consideration of the petition shall be at the discretion of the Commission.

3044 [RESERVED]

3045 MISCELLANEOUS FEES

3045.1 Fees for miscellaneous zoning services and documents provided by the Office of Zoning shall be as follows:

- (a) The fee for providing a zoning certification shall be fifteen dollars (\$15.00);
- (b) The fee for photocopying shall be twenty cents (20c) per page; and
- (c) A copy of the Zoning Map shall cost five dollars (\$5.00).

3045.2 All fees shall be paid by check or money order made payable to the order of the D.C. Treasurer.

3 0 4 6 DEFINITIONS

3046.1 When used in this chapter, the following term shall have the meanings ascribed:

Commission - the Zoning Commission for the District of Columbia.

Director - the Director of the Office of Zoning, or such successor official as shall be designated to be the supervisor of the full-time administrative staff of the Commission.

Member - a member of the Commission of the District.

Party - an applicant, or the Advisory Neighborhood Commission within which the property is located or any person who is admitted as a party by the Commission pursuant to §3022. Parties shall have all those rights set forth in this chapter, specifically including §§3000, 3004, 3020, 3022, 3024, 3025, 3036 and 3029.

Person - includes an individual, partnership, association, corporation, public agency, or governmental unit or department.

Presiding officer - the chairperson of the Commission, or the chairperson *pro tem* of the Commission.